S.B. CIVIL WRIT PETITION NO.326/2004

J.K.Industries Ltd.

VS

Bhanwar Lal & Ors.

DATE OF ORDER : 17.3.2005

HON'BLE MR.PRAKASH TATIA, J.

Mr.Rajendra Mehta, for the petitioner .
Mr.T.Gupta, for the respondents.

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Heard learned counsel for the parties.

Learned counsel for the petitioner submits that the suit for specific performance of the personal service contract is not maintainable for which learned counsel for the plaintiff-respondents is not disputing the position in view of the judgment of the Hon'ble Supreme court. The grievance of the petitioner is that despite this fact, the petitioner's application filed under Order 7 Rule 11 CPC was dismissed by the trial court and the trial court is proceeding with the trial on the issue whether the plaintiff is entitled for relief of specific performance of personal service contract. Learned counsel for the respondent-plaintiff fairly submitted that since that relief cannot be granted, therefore, the plaintiff is not pressing his suit for the relief of

contract of personal service and is proceeding with the suit only for getting the damages from the defendant-petitioner because of the breach committed by the petitioner-defendant and for that purpose, the plaintiff-respondent intending to prove that he is entitled for the damages because of the illegal action of the petitioner-defendant.

In view of the above when the plaintiff himself confined his relief to the damages only and is not pressing any relief for specific performance of personal service contract, nothing survives to be decided by the trial court an issue of specific performance of service contract and the suit shall be treated to be a suit for damages on the basis of the grounds raised by the plaintiff in his plaint.

In view of the above, the present writ petition of the petitioner is disposed of.

(PRAKASH TATIA), J.

c.p.goyal/-